

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MILTON O. BROWN,

04-CV-862-JE

Plaintiff,

ORDER

v.

WACHOVIA COMMERCIAL MORTGAGE,
INC., a New Jersey corporation,
fka The Money Store Commercial
Mortgage, Inc.,

Defendant.

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BROWN, Judge.

Magistrate Judge John Jelderks issued Findings and Recommendation (#78) on December 15, 2005, in which he recommended the Court grant Defendant's Motion for Partial Summary Judgment (#54) as to Plaintiff's claims, deny Defendant's Motion for Partial Summary Judgment (#54) as to Defendant's first counterclaim for declaratory relief, and deny Plaintiff's Motion for Partial Summary Judgment (#59). Plaintiff filed timely objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). *See also United States v. Bernhardt*, 840 F.2d 1441, 1444 (9th Cir. 1988); *McDonnell Douglas Corp. v. Commodore Business Machines, Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981), *cert. denied*, 455 U.S. 920 (1982). Because the objecting party did not arrange for the transcription of the record pursuant to Fed. R. Civ. P. 72(b) nor did any party protest the lack of a transcript, the Court did not review a transcript or tape recording of the proceedings before the Magistrate Judge as part of the Court's *de novo* review. *See Spaulding v. Univ. of Wash.*, 686 F.2d 1232, 1235 (9th Cir. 1982).

This Court has reviewed the pertinent portions of the record *de novo* and does not find any error in the Magistrate Judge's Findings and Recommendation.

CONCLUSION

The Court **ADOPTS** Magistrate Judge Jelderks's Findings and Recommendation (#78) as follows:

1. The Court **DENIES** Plaintiff's Motion for Partial Summary Judgment (#59) and **GRANTS** Defendant's Motion for Partial Summary Judgment (#54) as to all of Plaintiff's claims. The Court, therefore, **DISMISSES** Plaintiff's claims **with prejudice**.
2. The Court **DENIES** Defendant's Motion for Partial Summary Judgment (#54) as to Defendant's first counterclaim for declaratory relief.

IT IS SO ORDERED.

DATED this 15th day of March, 2006.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge